

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,445

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED AUG 15 1958

Joseph W. Stewart
CLERK

HARLEE GRADY,

Appellant,

v.

MARIE E. GRADY,

379

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EVERETT L. EDMOND

1510 Ninth Street, N. W.
Washington 1, D. C.

Counsel for Appellant

(i)

QUESTIONS PRESENTED

1. Whether the trial court erred in incorporating into the final decree of divorce a provision requiring appellant to convey to appellee certain real estate owned exclusively by appellant.

2. Whether upon the record considered as whole the Judgment of the lower court should be reversed for the want of equity.

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,445

HARLEE GRADY,

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v.

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Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is evoked under Title 28, U.S.C., Section 1291, to review the rulings of the District Court below in this action begun by the entry of a judgment requiring appellant to convey certain real estate to appellee, together with the payment of a stipulated sum as alimony per month after appellant was granted a final divorce. It is from the entry of the final judgment in the cause that this appeal is prosecuted.

STATEMENT OF THE CASE

This is an appeal taken by appellant to reverse a final judgment entered by the Court below on the 26th day of February, 1958, in which the trial judge not only awarded the wife, appellee, \$40.00 per month as alimony but also required appellant to convey to appellee real property, owned solely by appellant and located in the State of Maryland. The divorce was granted to appellant, a resident of the District of Columbia, from the appellee, a resident of the State of Maryland. The original Order was entered on March 12, 1957, but thereafter upon motion by appellee the original Order was modified so as to change the monthly alimony from \$40 per month to \$60.00 per month, on June 21, 1957. That thereafter on the 26th day of February, 1958, the lower court again modified its Order by the substitution of \$40.00 per month in lieu of \$60.00 per month. Appellant is aggrieved because of the refusal of the lower court to delete from said Order the provision which requires the appellant to convey his separate real estate to the appellee.

This appeal therefore raises the question whether the District Court for the District of Columbia may properly award to the wife, from whom the husband has obtained an absolute divorce, a portion of her husband's real property.

SUMMARY OF ARGUMENT

1. The Court below was powerless to order a conveyance of appellant's real estate to his wife.
2. That the Order of the Court below is not founded upon equity, but on the contrary it awards the "wrongdoer".

ARGUMENT

I.

THE HUSBAND'S REALTY MAY NOT BE AWARDED A
SPOUSE IN PART PAYMENT OF ALIMONY

This Court has long since held that a wife's right to participate in the realty of her husband must arise independent of a divorce action. That is to say that a divorce action creates no right in the real property of either spouse, but is only an ancillary remedy in the enforcement of a subsisting right. Holcomb v. Holcomb, (1954), 93 U.S. App. D.C. 242, 209 Fed. 2d 794.

There is no Statute in the District of Columbia authorizing a Court to give a husband's property to his wife as an award of alimony or in augmentation thereof. Moreover, where there is a suit for divorce, a wife may not obtain as a mere incident thereof, an adjudication of property rights. Thus in the case of Wheeler v. Wheeler, (1951), 88 U.S. App. D.C. 193, 188 F. 2d 31, this Court said: "A wife must have a legal or equitable interest in her husband's property before she can have an adjudication of her rights therein". "A wife's right to such an adjudication, therefore does not flow from her right to a divorce, but must be based upon a claim of title wholly independent of divorce and the concomitant award of permanent alimony."

In the case of Keleher v. Keleher, (1951), 89 U.S. App. D.C. 266, 192 F. 2d 601, it was held that: "Absent some right or element of ownership, legal or equitable, on the part of the wife, in the property of the husband, it is error for the Court to order the transfer of that property to her." "While the question then before us related to real property, we think that the same underlying reasoning precludes the sort of division of the husband's funds and other property which was ordered in this case." This Court further stated that "We recognize the power of the trial court in the exercise of discretion to make awards of a character reasonably to be included in concept of support and maintenance. - - -

But the right to support is not the right to endowment and the present award falls clearly in the latter category."

Since this Court has consistently held that the husband's real estate may not be conveyed in furtherance of the wife's alimony security, it therefore follows that the lower court erred in awarding appellant's real property to the appellee.

II.

APPELLANT OBJECTED TO ENTRY OF FINAL JUDGMENT

It may be noted from the record that an extensive hearing was held immediately following the entry of the final judgment, which constitutes the basis of this appeal. During this hearing it was evident that appellant made it clear that he objected to a conveyance of his real property to the appellee. There was nothing in the law which compelled appellant to make the conveyance and the lower court was powerless to make such an Order as a part of the alimony allowance.

Indeed the record is barren of any showing as to the financial circumstances of the appellee. It must be borne in mind that half of the property which the lower court has ordered deeded to the appellee had already been sold to appellant's step-daughter by a former wife. The testimony of appellant not only shows that he has half of the real property in question but that the vendee has built a home on that part which has been sold.

It is quite strange that no effort was made by the appellee in the Court below to inform the Court along the line of her monthly income and expenditures. Certainly the Domestic Relations Commissioner, D. C. was not very much impressed with her needs, inasmuch as he recommended \$60.00 monthly.

It is incredible that the appellant should be required to convey his two acres of real estate, with a house built thereon, to the appellee in

augmentation of alimony. There is nothing in the record to show that the appellant's financial status would require the Court to shackle him with such an onerous Order.

It is implicit from the evidence that appellant's absolute divorce carried a marked degree of concomitant responsibilities. It is evident from the Judgment below that even though the appellee deserted in the District of Columbia and sought refuge in the State of Maryland the trial court has given this "deserter" every advantage.

Appellee was in no bargaining position, after having deserted the appellant. The casuistry of the matter is that the rights of the wrongdoer were far more guarded by the Court and counsel than those of the appellant who, incidently, was awarded the divorce.

One cannot read the record in this case without inquiring why one who has been awarded an absolute divorce from a "non-resident" on the ground of desertion, be called upon to pay such a heavy penalty to the guilty wife. The adduction leads to "quaere" whether the trial court should "sui sponte" have raised the question of the equities of the parties. Moreover, appellant is saddled with the monthly payments on the subsisting trust on said real estate which is in addition to the \$40.00 per month alimony.

CONCLUSION

Wherefore and by reason of the decisions of this Court and the foregoing argument, appellant respectfully urges upon this Court that it reverse the Judgment granted below.

EVERETT L. EDMOND

1510 Ninth Street, N. W.
Washington 1, D. C.

Counsel for Appellant

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,445

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED SEP 2 1958

Joseph W. Stewart
CLERK

HARLEE GRADY,

Appellant,

v.

MARIE E. GRADY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOL ROTHBARD

National Press Building
Washington, D. C.

Attorney for Appellee

QUESTIONS PRESENTED

In the opinion of appellee, the questions involved are as follows:

1. Did the United States District Court for the District of Columbia, err in denying appellant's motion to amend the order entered on March 12, 1957 by striking therefrom the direction that appellant convey his real property to appellee?
2. Did appellant's counsel possess the authority to bind appellant with respect to the transfer to appellee of appellant's real property?
3. Did the Court possess statutory or equitable authority to compel appellant to transfer title to his property to appellee?

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QUESTIONS PRESENTED

In the opinion of appellee, the questions involved are as follows:

1. Did the United States District Court for the District of Columbia, err in denying appellant's motion to amend the order entered on March 12, 1957 by striking therefrom the direction that appellant convey his real property to appellee?
2. Did appellant's counsel possess the authority to bind appellant with respect to the transfer to appellee of appellant's real property?
3. Did the Court possess statutory or equitable authority to compel appellant to transfer title to his property to appellee?

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,445

HARLEE GRADY,

Appellant,

v.

MARIE E. GRADY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

SUMMARY OF ARGUMENT *

The action of the Court below in denying the relief sought by appellant was proper considering the undisputed facts that appellant by his own actions had agreed to and subsequently acquiesced in the action of his counsel as a result of which the judgment was entered, particularly since such agreement resulted and still results in a distinct advantage to appellant.

* At the time of filing of this brief, the appellant herein has not filed a printed appendix. Appendix references are therefore omitted.

ARGUMENT

On the basis of the facts presented and the law applicable thereto, it was not error for the Court to deny the relief sought by appellant.

The Court may refuse relief to a party seeking to set aside or amend a judgment entered by and with the consent of his counsel particularly where it appears (1) that said consent was authorized, and (2) that the party represented by said counsel was present but remained silent at the trial and by his silence acquiesced in and approved the action taken by his counsel.

That the appellant authorized his counsel to consent to that portion of the judgment relating to the real estate in question is clear and unequivocal. A judgment entered by consent with the knowledge, approval and authorization of the party represented is binding. Pacific R. R. Co. v. Ketchum, 101 U. S. 289.

As the record will reveal, the facts are that at the trial of this cause, the Court questioned the reason for an agreement made to reduce the monthly allowance to appellee from \$60.00 a month, previously consented to by appellant to \$40.00 a month and the Court was informed by both counsel that a property settlement had been agreed to which provided for such reduction. At that time, appellant was on the witness stand, heard the discussion between counsel and the Court but raised no question. This he admitted at the hearing on the motion to amend, at which hearing he contended that his counsel had acted without authority. His counsel, testifying at said hearing, stated that appellant had agreed on the morning of the trial to transfer said property to appellee in consideration of a reduction in the monthly allowance, and authorized him to consent to such arrangement and agreement. Appellant was satisfied to accept the agreement at the time since the order to which he objected, not immediately as stated by him, but some time thereafter, gave him the benefits he so earnestly desired. Appellant's counsel, acting for him in making the agreement and consenting to the judgment, did so with

appellant's full knowledge, consent and authorization as revealed during the hearing before the trial Court and was fully binding on him. Pacific R. R. Co. v. Ketchum, 101 U. S. 289, supra; Bush v. Missouri State Life Ins. Co., 224 P. 331.

Since in the opinion of appellee, the primary question in this appeal is whether appellant's counsel was authorized to consent to the entry of the judgment with respect to the real property, the question of the Court possessing statutory or equitable authority does not exist since the action taken by appellant's counsel is one which he authorized and to which he consented in connection with a property settlement between the parties and is not an award of property in lieu of or in partial payment of alimony. This is not a cause in which there was a contest to determine the property rights of the respective parties but is one in which appellant consented to the judgment in order to obtain certain benefits for himself, benefits he gladly accepted and still continues to accept and enjoy.

CONCLUSION

In view of the foregoing, and since the record unquestionably reveals that appellant by his own actions, which he admitted, consented to and acquiesced in the agreement to transfer the property to appellee, it is respectfully prayed that the Court affirm the judgment of the trial Court and that appellee be awarded her costs herein including a reasonable amount for her counsel fees.

Respectfully submitted,

SOL ROTHBARD

National Press Building
Washington, D. C.

Attorney for Appellee

REPLY BRIEF FOR APPELLANT AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

SEP 16 1958

Joseph W. Stewart

CLERK

No. 14,445

HARLEE GRADY,

Appellant,

v.

MARIE E. GRADY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EVERETT L. EDMOND

1510 9th Street, N. W.
Washington 1, D. C.

Attorney for Appellant.

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,445

HARLEE GRADY,

Appellant,

v.

MARIE E. GRADY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANT

SUMMARY OF ARGUMENT

1. Appellant did not authorize his counsel to prepare an order whereby he was to convey his real estate to the appellee.

2. If there was any such authorization it should have been in writing in order to comply with the Statute of Frauds, Title 12-301 of the District of Columbia Code and Title 45-106 of the Code.

ARGUMENT

The appellant never authorized his counsel to prepare an order which commanded him to convey his real property to the appellee. Such authorization should have been in writing according to the D. C. Code, Titles 12-301 and 45-106.

In cases of this kind where there is an agreement as concerns real estate it is fait accompli at the time of the divorce hearing. The appellant had not seen the final judgment for divorce until after the decree had been granted. Therefore when opposing counsel said that the property rights had been settled, appellant thought that said property was to remain in status quo. He had signed no papers authorizing his counsel to convey his real estate to appellee, nor had he conveyed his real estate to her, nor was any testimony taken concerning said real estate.

When appellant discovered what had happened he immediately sought other counsel to undo the wrong which was unjustly and inequitably meted unto him contrary to the Statute of Frauds and the principles of equity.

CONCLUSION

Therefore, appellant contends: That he did not authorize his counsel in writing, which is required by law, nor was it a fait accompli at the time of the trial, and nor any testimony taken concerning said real estate, and appellee has been given an award of alimony, it is respectfully urged that this Court reverse the order of the lower court and vacate that portion of the order which requires the appellant to convey his real estate to the appellee.

Respectfully submitted,
EVERETT L. EDMOND

1510 9th Street, N. W.
Washington 1, D. C.

Attorney for Appellant.

(1)

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APPELLANT'S APPENDIX
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

71 [Filed October 11, 1955]

HARLEE GRADY,
63 "O" Street, N. W.,
Washington, D. C.,

Plaintiff,

vs.

MARIE E. GRADY,
Box 30, Whitfield,
Chapel Road,
Lanham, Maryland,

Defendant.

Civil Action No. 4469-55

COMPLAINT FOR ABSOLUTE DIVORCE
(Grounds - Two Years' Desertion)

Comes now the plaintiff, Harlee Grady, complaining of the defendant, Marie E. Grady, and for cause of action alleges:

1. That the plaintiff is an adult citizen of the United States and a resident of the District of Columbia, and has been such resident for more than two years before the filing of this suit, having residing at 63 "O" Street, N. W., Washington, D. C., from 1953 to the present time.

2. That the defendant is likewise an adult citizen of the United States and a non-resident of the District of Columbia, residing at Box 30, Whitfield, Chapel Road, Lanham, Maryland; that the plaintiff is unable to state any other address of the defendant.

3. That the plaintiff and the defendant were lawfully married on the 17th day of January, 1941, at Washington, D. C.

4. That no children were born as a result of said marriage and there are no property rights to be adjudicated.

5. That on, to-wit, the 30th day of April, 1951 at Washington, D. C., the defendant did desert and abandon the plaintiff; that said desertion has continued uninterruptedly and without cohabitation for more than two years before the filing of this suit, and was deliberate and final,

and the separation of the parties hereto is beyond any reasonable expectation of reconciliation.

WHEREFORE, the premises considered, the plaintiff prays:

1. That process issue out of this Honorable Court directed to the defendant and requiring her to appear and answer the exigencies of this Complaint, and that if personal service cannot be had upon the defendant, publication be had in lieu thereof according to law.
- 72 2. That upon final hearing the plaintiff be granted a judgment of absolute divorce from the defendant on the grounds of desertion for more than two years.
3. And for such other and further relief as to the Court may seem just and proper.

/s/ Harlee Grady

[JURAT dated Sept. 12, 1955.]

73 [Filed November 16, 1955]

ANSWER

The answer of the defendant, Marie E. Grady, respectfully shows to this Honorable Court, as follows:

1. The defendant admits the allegations contained in paragraphs 1, 2 and 3 of the complaint.
2. The defendant admits that no children were born of their marriage, but denies that there are no property rights to be adjudicated. The defendant states that the plaintiff and defendant are owners as tenants by the entirety of real property located in Lanham, Maryland.
3. The defendant denies that she deserted and abandoned the plaintiff, as alleged in paragraph 5 of the complaint. She admits that the parties hereto have been separated for more than two years and states that said separation occurred on, to wit, November 8, 1952 at Lanham, Maryland, when the defendant left the home of the parties hereto, taking up his residence in Washington, D. C.
4. That all allegations in the complaint not specifically admitted herein are denied,

WHEREFORE, the premises considered, the defendant prays:

1. That the complaint filed herein be dismissed.

74 2. That the plaintiff be required by order of this Court to contribute a reasonable amount toward the maintenance and support of the defendant pendente lite and permanently and that she be allowed a reasonable amount for counsel fees and suit money.

3. And for such other and further relief as to this Honorable Court may seem just and proper.

/s/ Marie E. Grady

/s/ Sol Rothbard
Attorney for Defendant
* * *

[Verification]

[JURAT dated November 14, 1955.]

75 [Filed March 12, 1957]

JUDGMENT FOR ABSOLUTE DIVORCE

Upon consideration of the Complaint for Absolute Divorce filed herein by the plaintiff, the Answer of the defendant, and testimony taken in open Court; and it appearing to the satisfaction of the Court that the plaintiff is a bona fide resident of the District of Columbia for more than two years before the filing of this suit; that the parties were lawfully married at Washington, D. C., on the 17th day of January, 1941; that no children were born as the result of said marriage; that the defendant deserted the plaintiff and abandoned him on the 30th day of April, 1951 at Washington, D. C., more than two years before the filing of this suit; that there has been no cohabitation between the parties since the said desertion; it is by the Court this 12th day of March, 1957,

ADJUDGED, ORDERED AND DECREED, that the plaintiff, Harlee Grady, be and he is hereby awarded an Absolute Divorce from the defendant, Marie E. Grady, on the grounds of desertion for more than two years; and

IT IS FURTHER ORDERED that the plaintiff pay to the defendant as alimony the sum of Forty Dollars (\$40.00) each month, first payment to commence on the 12th day of May, 1957 and a like sum each and every month thereafter until further order of the Court; and

IT IS FURTHER ORDERED that the plaintiff is hereby directed to convey to the defendant the real estate owned by the plaintiff on Whitfield, Chapel Road, Lanham, Maryland; and

IT IS FURTHER ORDERED that the plaintiff is hereby directed to pay off the existing first trust on said property in accordance with the normal payments now being made at the Suburban Trust Company, Hyattsville, Maryland, said first trust being in the amount of approximately Eleven Hundred Dollars (\$1100.00); and

IT IS FURTHER ORDERED that the plaintiff pay to the defendant's attorney the sum of One Hundred Dollars (\$100.00) for attorney's fee for the defendant; and

PROVIDED, however, that this decree shall not be effective so as to dissolve the marriage of the parties herein until the expiration of the time allowed for taking an appeal, nor until the final disposition of any appeal taken in this case, and in any event this decree shall not become absolute and take effect until the expiration of six months (6 months) from the date hereof.

/s/ H. A. Schweinhaut
JUDGE

Seen:

/s/ Sol Rothbard
Attorney for Defendant

78 [Filed October 30, 1957]

MOTION TO AMEND ORDER OF MARCH 12, 1957

Comes now the plaintiff, Harlee Grady, by and through his attorney, and moves this Honorable Court to amend its Order of March 12, 1957, and as reasons therefor says:

1. That said Order awarded the deserting wife \$40.00 per month permanent alimony, which has been increased to \$60.00 per month.

2. That said Order also required the plaintiff, the prevailing party, to convey to the defendant, certain real property located in Lanham, Md., which belonged solely to the plaintiff.

3. That the plaintiff had no knowledge that he was to convey his property to the defendant until after the Order was signed.

4. That plaintiff never agreed with and through counsel at the time to convey his property to the defendant; and that had there been such an agreement it should have been in writing.

5. That no evidence was taken in Court concerning said real estate which could form the basis for that part of the Order requiring plaintiff to convey to defendant.

6. That there is no provision in the District of Columbia Code specifically authorizing the Court in a divorce proceeding to award to one spouse property of which the legal and equitable title is in the other spouse.

7. That the Courts are agreed that no power resides in an Equity Court to award the husband's property to the wife in addition to alimony allowances.

8. And for such other and further reasons as may be advanced at the hearing of this Motion.

/s/ Everett L. Edmond
Attorney for Plaintiff

* * *

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POINTS AND AUTHORITIES

1. Wheeler vs. Wheeler, 88 U.S. App. D.C. 193, 188 F. 2d 31.
2. Keleher vs. Keler, 89 U.S. App. D.C. 266, 192 F. 2d 601.
3. The Attached affidavit of the plaintiff
4. The broad principles of Equity.

[Certificate of Service]

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[Filed Oct. 30, 1957]

AFFIDAVIT IN SUPPORT OF MOTION TO AMEND
ORDER OF MARCH 12, 1957

District of Columbia, ss:

Harlee Grady being first duly sworn according to law, on oath deposes and says that he is the plaintiff in the above-entitled cause; that on the 12th day of March, 1957 this Court signed an Order requiring the plaintiff to pay defendant the sum of \$40.00 monthly as alimony; and further required the plaintiff to convey the real estate owned by the plaintiff on Whitefield, Chapel Road, Lanham, Maryland, to the defendant and pay off the existing mortgage on said real estate, in which the defendant only had an inchoate dower right; that all of this was done without any testimony in this Honorable Court and without any discussion with the plaintiff or agreement by him; that your Affiant had no knowledge that his property was to be given to the defendant.

/s/ Harlee Grady

[JURAT dated October 30, 1957]

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[Filed Feb. 26, 1958]

ORDER DENYING MOTION TO AMEND ORDER OF
MARCH 12, 1957

This cause having come on for hearing on the motion filed herein by the plaintiff to amend the order entered on March 12, 1957, and the Court having heard the arguments of counsel and having considered the evidence adduced at the hearing, it is, by the Court, this 26th day of February, 1958,

ORDERED,

1. That the said motion to amend be and the same is hereby denied.

2. That the order of March 12, 1957, shall, in all respects, be and remain unchanged and in full force and effect.

3. That the order heretofore entered herein on June 21, 1957, be and is hereby revoked and set aside, and the alimony payable to the defendant by the plaintiff shall henceforth and without deduction of any

kind be in the amount of \$40.00 a month as directed in the order of March 12, 1957, and shall be payable on the day of the month stated therein.

/s/ H. A. Schweinhaut
JUDGE

Seen:

/s/ Everett L. Edmond
